

REMARKS

This paper is in response to an office action dated February 25, 2008. Favorable reconsideration of the application is respectfully requested.

Applicant hereby disclaims the statement in the previously submitted affidavit by Daniel C. Sawyer that Custom Building Products offers a lifetime warranty on the entire floor assembly ONLY if the assembly uses the Brock acoustic layer. Applicant has recently learned that Custom Building Products offers such a warranty on any system if all components of the system are purchased from Custom Building Products, regardless of which of acoustical layer is used in the system.

In the office action dated February 25, 2008, the Examiner finally rejected independent Claims 1 and 31 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,578,363 to Finley et. al (hereinafter, "Finley") in view of U.S. Patent No. 4,464,428 to Ebert (hereinafter, "Ebert"). The Examiner asserted that Finley discloses all of the limitations of Applicant's independent Claims 1 and 31 with the exception of the characteristics of the foam layer. To overcome the deficiency in Finley, the Examiner relied on Ebert. The Examiner introduced the Ebert reference, which discloses a closed cell foamed material that is useful in the building construction industry for sound attenuation. The Examiner asserted that it would have been obvious to modify the insulating foam layer of Finley to be as disclosed by Ebert. The Examiner further stated that the claim limitation of spacing between portions of the beads is an inherent property of a closed cell foam. Further, the Examiner directed Applicant's attention to US PG Publication 2005/0042394 to Sawyer et al. (hereinafter "Sawyer") and US Patent 6,453,477 to Bainbridge et al (hereinafter "Bainbridge") and stated that these references show that the claimed features are properties of a closed cell foam.

The rejection is improper because some of the references relied on were not made part of the rejection. Accordingly, Applicant requests withdrawal of the rejection and allowance of all claims.